



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
SARATOGA CARE, INC.

CONDITION:

DECEMBER 31, 2013

DATE OF REPORT:

DECEMBER 2, 2014

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

OF THE

SEGREGATED GIFT ANNUITY FUND

OF THE

SARATOGA CARE, INC.

AS OF

DECEMBER 31, 2013

DATE OF REPORT:

DECEMBER 2, 2014

EXAMINER:

ELKIN WOODS

TABLE OF CONTENTS

<u>ITEM</u>		<u>PAGE NO.</u>
1.	Executive summary	2
2.	Scope of examination	3
3.	Description of Fund	4
4.	Significant financial information	5
5.	Treatment of annuitants	7
6.	Annual statement reporting	8
7.	Summary and conclusions	9



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

December 2, 2016

Honorable Maria T. Vullo
Superintendent of Financial Services
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 31165, dated May 8, 2014 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Saratoga Care, Inc., hereinafter referred to as “the Fund.” The Fund’s home office is located at 211 Church Street, Saratoga Springs, NY 12866.

Wherever “Department” appears in this report, it refers to the New York State Department of Financial Services.

The report indicating the results of this examination is respectfully submitted.

1. EXECUTIVE SUMMARY

The examiner recommends that the Fund diversify its investment holdings. (See item 4 of this report)

The examiner recommends that the Fund adopt an Investment Strategy Statement. Such a Statement should refer to the prudent investor standard as defined in Section 11-2.3 of the Estates, Powers and Trusts Law, which standard, as specified in Section 1110(b) of the New York Insurance Law, governs the manner in which the required admitted assets of a segregated gift annuity fund shall be invested. The Fund should exercise reasonable care, skill and caution to make and implement investment and management decisions as a prudent investor would for the entire portfolio. In doing so, the Fund should take into account present and future distributions to or for the beneficiaries and create a plan to meet the needs of those distributions to establish the ISS's risk, return, and time horizon objectives. (See item 4 of this report)

The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms that differed from the gift annuity agreement forms that were filed with the Superintendent. The examiner recommends that the Fund file with the Superintendent all gift annuity agreement forms that were used and not previously filed with the Superintendent. (See item 5 of this report)

The examiner recommends that the Fund prepare its annual statements according to the Department's instructions. (See item 6 of this report)

2. SCOPE OF EXAMINATION

This is the first examination of the Fund since it received its special permit to issue gift annuity agreements in 2009. This examination covers the period from August 25, 2009 through December 31, 2013. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2013 but prior to the date of this report (i.e., the completion date of the examination).

The examination comprised a verification of assets and liabilities as of December 31, 2013 to determine whether the Fund's filed 2013 annual statement fairly presents its financial condition. The examiner reviewed the Fund's income and disbursements necessary to accomplish such verification.

This report on examination is confined to financial statements and comments on those matters which involve departure from laws, regulations, or rules or which require explanation or description.

3. DESCRIPTION OF FUND

Saratoga Care, Inc. (the “Corporation”) is organized for the purpose of promoting health to the community. Under the provisions of its by-laws, the Corporation is permitted to issue gift annuity agreements and it has done so since 2002. A special permit was granted to the Corporation by the Department on August 25, 2009, authorizing it to issue gift annuity agreements as specified in Section 1110 of the New York Insurance Law. The Fund receives donations from the donors, calculates the tax consequences of the annuity and values the property for the donor after the close of business the day of the transfer or receipt of stock certificate(s), prepares two annuity contracts and sends them to the donor to sign, and sends one original contract and gift illustration with tax calculations to the donor and retains the other contract in the donor’s file. PNC Bank is the Fund’s custodian. PNC Bank sets up an individual record in the name of the donor and credits the record with the gift amount, records the payment and beneficiary information, prepares and mails the annuity checks for each donor, reduces each gift annuity account by the value of the payment made and prepares and mails the annual tax forms directly to donor and tracks the value of each gift annuity.

The management of the Corporation and the Fund and all of its affairs and property are entrusted to a board of trustees. The number of trustees is set at 14 regular voting trustees. As of December 31, 2013, the board consisted of 14 trustees. The trustees elect a Chairperson, a Vice Chairperson, a Secretary and a Treasurer. The board of trustees select and appoint a President and Chief Executive Officer who is its representative in the management of the Corporation. The nomination and election procedures of the trustees and their terms of office are set by the by-laws.

4. SIGNIFICANT FINANCIAL INFORMATION

The following table indicates the Fund's financial growth during the period under review:

	December 31, <u>2009</u>	December 31, <u>2013</u>	<u>Increase</u>
Admitted assets	<u>\$1,040,002</u>	<u>\$1,191,590</u>	<u>\$151,588</u>
Liabilities	<u>\$ 861,860</u>	<u>\$ 876,259</u>	<u>\$ 14,399</u>
Minimum required fund balance	\$ 86,186	\$ 87,626	\$ 1,440
Excess fund balance (surplus)	<u>91,956</u>	<u>227,706</u>	<u>135,750</u>
Total annuity fund balance	<u>\$ 178,142</u>	<u>\$ 315,332</u>	<u>\$137,190</u>
Total liabilities and annuity fund balance	<u>\$1,040,002</u>	<u>\$1,191,590</u>	<u>\$151,588</u>

The increase in assets, liabilities and annuity fund balance reflects an increase in the total number of annuities in force. Annuities increased from 22 with annual payment amounts of \$61,056 as of December 31, 2009 to a total of 28 with annual payment amounts of \$75,990 as of December 31, 2013.

The increase in assets and annuity fund balance is also attributable to an increase in the market value of investments in common stocks.

The Fund's admitted assets, as of December 31, 2013, were invested mainly in common stocks (98.17%).

Section 1409(a) of the New York Insurance Law states,

“(a) Except as more specifically provided in this chapter, no domestic insurer shall have more than ten percent of its admitted assets as shown by its last statement on file with the superintendent invested in, or loaned upon, the securities (including for this purpose certificates of deposit, partnership interests and other equity interests) of any one institution.”

According to the 2013 annual statement, the Fund reported: 47.94% of its admitted assets invested in the securities of Dodge & Cox Income Fund mutual fund; 12.24% invested in the securities of Touchstone Sands Capital Select Growth FD Class Y Fund #342 mutual fund; and

10.85% invested in the securities of Blackrock Funds Equity Dividend Institutional Class Fund 383 mutual fund. The Fund's current concentration in the three mutual funds makes it highly unlikely that the Fund's other assets could provide a variability to offset the risks inherent in the funds.

The examiner recommends that the Fund diversify its investment holdings. A trustee using reasonable care, skill and caution should diversify the Fund's assets. A diversification is proper when it disperses the investments' risks consistent with the Investment Strategy Statement's ("ISS") risk, return, and time horizon objectives, and the various risks in the portfolio offset each other. Section 1409 of the New York Insurance Law is instructive. Limiting exposure to any assets of any one institution to ten percent of admitted assets would reasonably assure that the risks in the investment in that institution are offset by the rest of the portfolio. If the trustee has determined that it is in the interests of the beneficiaries not to diversify, then it should memorialize the reasons for that determination in terms of the ISS's risk, return, and time horizon parameters.

The examiner recommends that the Fund adopt an Investment Strategy Statement. Such a Statement should refer to the prudent investor standard as defined in Section 11-2.3 of the Estates, Powers and Trusts Law, which standard, as specified in Section 1110(b) of the New York Insurance Law, governs the manner in which the required admitted assets of a segregated gift annuity fund shall be invested. The Fund should exercise reasonable care, skill and caution to make and implement investment and management decisions as a prudent investor would for the entire portfolio. In doing so, the Fund should take into account present and future distributions to or for the beneficiaries and create a plan to meet the needs of those distributions to establish the ISS's risk, return, and time horizon objectives.

5. TREATMENT OF ANNUITANTS

The examiner reviewed a sample of annuity files to determine whether the annuitants were treated fairly and in accordance with the provisions of the annuity agreements. The examination also consisted of a review of the various controls involved, a check of the accuracy of the computations and the tracing of accounting data to the books of account.

Section 1110(a) of the New York Insurance Law states, in part:

“. . . Every such corporation or association shall, before making such agreement, file with the superintendent copies of its forms of agreements with annuitants . . .”

The examiner’s review of the nine gift annuity agreement forms used by the Fund for gift annuities issued in New York during the examination period noted that in all nine instances, the Fund used gift annuity agreement forms that differed from the gift annuity agreements filed with the Superintendent.

The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms that differed from the gift annuity agreement forms that were filed with the Superintendent. The examiner recommends that the Fund file with the Superintendent all gift annuity agreement forms that were used and not previously filed with the Superintendent.

6. ANNUAL STATEMENT REPORTING

The Department's Instructions for Completing Schedule A - Part 3 - Common Stocks in the 2013 Annual Statement state, in part:

“IMPORTANT NOTE: Mutual funds (funds that invest in stocks, bonds, options or currencies) are to be reported in Schedule A – Part 3 - Common Stocks.”

The Fund reported the following securities as bonds in Schedule A - Part 1 in its 2013 Annual Statement: Dodge & Cox Income Fund with a market value of \$571,219; Blackrock FDS (BHYIX) High Yield Portfolio Fund 318 Institutional Class with a market value of \$74,486; and Templeton Global Bond Fund AD Fund with a market value of \$67,845. The examiner determined the three securities were erroneously reported as bonds when, in fact, the three securities should be reported as mutual funds in the Fund's 2013 Annual Statement.

The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.

7. SUMMARY AND CONCLUSIONS

Following is the violation and recommendations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The examiner recommends that the Fund diversify its investment holdings.	6
B	The examiner recommends that the Fund adopt an Investment Strategy Statement. Such a Statement should refer to the prudent investor standard as defined in Section 11-2.3 of the Estates, Powers and Trusts Law, which standard, as specified in Section 1110(b) of the New York Insurance Law, governs the manner in which the required admitted assets of a segregated gift annuity fund shall be invested. The Fund should exercise reasonable care, skill and caution to make and implement investment and management decisions as a prudent investor would for the entire portfolio. In doing so, the Fund should take into account present and future distributions to or for the beneficiaries and create a plan to meet the needs of those distributions to establish the ISS's risk, return, and time horizon objectives.	6
C	The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms that differed from the gift annuity agreement forms that were filed with the Superintendent.	7
D	The examiner recommends that the Fund file with the Superintendent all gift annuity agreement forms that were used and not previously filed with the Superintendent.	7
E	The examiner recommends that the Fund prepare its annual statements according to the Department's instructions.	8

Respectfully submitted,

_____/s/
Elkin Woods
Senior Insurance Examiner

STATE OF NEW YORK)
)SS:
COUNTY OF NEW YORK)

ELKIN WOODS, being duly sworn, deposes and says that the foregoing report, subscribed by him, is true to the best of his knowledge and belief.

_____/s/
Elkin Woods

Subscribed and sworn to before me
this _____ day of _____

APPOINTMENT NO. 31165

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, BENJAMIN M. LAWSKY, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:

ELKIN WOODS

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE
SARATOGA CARE, INC.**

and to make a report to me in writing of the condition of said

FUND

with such other information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed my name
and affixed the official Seal of the Department
at the City of New York

this 8th day of May, 2014

BENJAMIN M. LAWSKY
Superintendent of Financial Services

By:


MICHAEL MAFFEI

ASSISTANT DEPUTY SUPERINTENDENT
AND CHIEF OF THE LIFE BUREAU

